IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

MFA.No. 466 of 2001(B)

OPMV.872/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PALA
DATED 27/06/2000
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APPELLANT: PETITIONER:

K.V.PAUL,
KANAYANATTU HOUSE,
ADUKKOM P.O.,
KOTTAYAM DISTRICT.

BY ADV. SRI.SHAJI THOMAS PORKKATTIL

RESPONDENTS:
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1. **THE SECRETARY,**
   MEENACHIL TALUK,
   AUTORICKSHAW THOZHILALI CO-OPERATIVE
   SOCIETY LTD., PALA.

2. **GEORGEKUTTY P.V.,**
   PUTHUKULATHIL HOUSE,
   ANDOOR, MARANGATTUPALLY.

3. **NATIONAL INSURANCE CO.LTD.,**
   PALA.

R1 BY ADV. SRI.MATHEW JOHN (K)
R1 SRI.BABY THOMAS
R3 SRI.M.A.GEORGE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.466 OF 2001

Dated 11th December, 2007

JUDGMENT

Koshy,J.

Appellant/claimant while travelling in an autorickshaw met with an accident and sustained personal injuries. It is stated that the accident occurred due to the negligence of the driver of the vehicle. Tribunal calculated Rs.70,000/= as compensation. But, since the appellant was in possession of the vehicle as higher purchaser, insurance company was not held liable to pay compensation as the appellant was the owner himself. The term `owner' is defined under section 2(30) of the Motor Vehicles Act as follows:

> "(30) "**Owner**" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire purchase, agreement or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement."

The registered owner of the vehicle was admittedly a Co-operative society. But, after execution of security bond and hypothecation agreement exclusive possession of the vehicle was transferred to the appellant and he was in possession of the vehicle at the time of accident.

Supreme Court in **Rajasthan State Road Transport Corpn.** v. **Kailash Nath Kothari** (AIR 1997 SC 3444) held that hirer of the vehicle who was in actual possession and control of the vehicle is the owner for the purpose of motor accident claims and he would be vicariously liable to pay compensation for tort committed by driver even if the driver is an employee of the registered owner. In view of the legal position, we are unable to held that appellant is not the owner of the vehicle so as to claim compensation from the insurance company. We see no ground to interfere with the award.

The appeal is dismissed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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